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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/851,958	05/10/2001	Arata Tomita	Q64221	4398

7590 08/19/2003  
SUGHRUE, MION, ZINN, MACPEAK & SEAS, PLLC  
2100 Pennsylvania Avenue, NW  
Washington, DC 20037-3213

EXAMINER

MAKI, STEVEN D

ART UNIT PAPER NUMBER

1733

DATE MAILED: 08/19/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/851,958

Applicant(s)

TOMITA, ARATA

Examiner

Steven D. Maki

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 21 July 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 21 April 2003. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☒ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: new issues: see advisory action attachment.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see advisory action attachment.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 7,9-11,15,18 and 19.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☒ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). 11.
10. ☒ Other: PTO 892 and Interview Summary (paper #11)

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**Advisory Action Attachment**

**Status of Amendment filed 7-21-03**

The amendment filed 7-21-03 has been received. Although the heading on page 1 of the response filed 7-21-03 states: "AMENDMENT UNDER 37 C.F.R. 1.111", the amendment filed 7-21-03 is being treated as an amendment under 37 CFR 1.116 (an amendment after Notice of Appeal) instead of merely an amendment under 37 CFR 1.111 (an amendment in response to a non-final first office action) since (1) a Notice of Appeal was filed on 4-21-03 and (2) the amendment filed 7-21-03 was filed more than six months after the mailing on 11-20-02 of the non-final office action. Applicant's attention is directed to MPEP 1215 (Withdrawal or Dismissal of Appeal).

**New Issues**

The new issues include: (1) in claims 7, 11, 15, 18 and 19, changing "tire primary rotating direction" to --tire forward rotational direction at a ground contact configuration-; (2) adding new claim 20 describing a sipe parallel to a contour line at a leading edge of the ground contact configuration, (3) adding new claim 21 describing the tread being non-directional and (4) adding new claim 22 directed to a vehicle instead of a tire.

**Remarks**

The terminal disclaimer filed 7-21-03 has been received and is proper. Accordingly the obvious type double patenting rejection set forth in paragraph 6 of the office action mailed 11-20-02 has been withdrawn.

Applicant argues that since the tread pattern of Japan '204's tire is directional, the forward direction of rotation of Japan '204's tire is fixed and predetermined and is

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the opposite of the forward direction of rotation of the claimed tire. The Examiner responds with the following comment: The claimed tire (which describes the sipe being inclined opposite a tire primary rotating direction) and Japan '204's tire share the common subject matter of a tire having a sipe oriented substantially parallel to an edge of a ground contacting area. The claimed tire while indicating an intended rotational direction, fails to require additional structure so as to differentiate the claimed tire from Japan '204's tire. The present claims for example fail to require a vehicle having the tire mounted thereon so as to indirectly require the tire to rotate in the intended direction instead of merely requiring the tire to have the capability of rotating in the intended direction.

Applicant argues that the directional tread pattern of Japan '204's tire cannot be ignored. This argument is not commensurate in scope with the claims and is therefore not persuasive. The claimed tire describes "a tire primary rotating direction". The present claims fail to require the claimed tire to have a directional tread pattern. Applicant apparently agrees that the claimed tire fails to require the tire to have a directional tread pattern since "[a]pplicant notes that no specific directionality is required in the tire of the present invention covered by the pending independent claims." (page 7 of response filed 7-21-03).

Applicant argues that Japan '204's directional tread pattern requires the directionality of the tire of Japan '204 to be fixed and predetermined. Applicant's arguments are not commensurate in scope with the claims. The present claims fail to require a "fixed and predetermined" directionality. Instead, the claims describe "a tire

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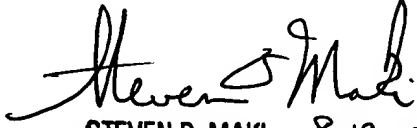
primary rotating direction". The description of "a tire primary rotating direction", which is broad but not indefinite), fails to require a "fixed and predetermined" directionality. The description of "a tire primary rotating direction" reads on the direction of rotation of the tire being determined by the step of mounting of the tire on a vehicle but fails to require the direction of rotation of the tire being determined by the directionality of the tread pattern.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven D. Maki whose telephone number is 703-308-2068. The examiner can normally be reached on Mon. - Fri. 7:30 AM - 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Ball can be reached on (703) 308-2058. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

Steven D. Maki  
August 19, 2003

  
STEVEN D. MAKI 8-19-03  
PRIMARY EXAMINER  
~~GROUP 1300~~  
Av 1733